

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170
	)	
National Association of State Utility	)	CG Docket No. 04-208
Consumer Advocates' Petition for Declaratory	)	
Ruling Regarding Truth-in-Billing	)	

**REPLY COMMENTS OF  
  
AARP  
  
ASIAN LAW CAUCUS  
  
CONSUMERS UNION  
  
DISABILITY RIGHTS ADVOCATES  
  
NATIONAL ASSOCIATION OF STATE PIRGS  
  
NATIONAL CONSUMER LAW CENTER**

On March 18, 2005, the Federal Communications Commission (“Commission”) released its Second Further Notice of Proposed Rulemaking (“Second FNPRM”) in the Truth-in-Billing (“TIB”) proceeding.<sup>1</sup> Initial Comments were filed jointly by AARP, Asian Law Caucus, Consumers Union, Disability Rights Advocates, National Association of State PIRGS, National Consumer Law Center (collectively the “Consumer Groups”) on June 24, 2005.

## **I. INTRODUCTION**

The Consumer Groups urge the Commissioners to place the interests of consumers at the forefront by adopting protective and enforceable truth-in-billing rules to promote fair and properly functioning competitive residential telecommunications markets. While many industry comments question the need for additional billing rules<sup>2</sup>, we note that the Commission itself stated that its “review of the complaints received by this Commission plainly demonstrate that the difficulty consumers experience in trying to understand their bills for telecommunications services has been a significant, contributing factor in the growth of these fraudulent activities.”<sup>3</sup> NASUCA’s initial petition, and the comments of the Consumer Groups and others, points to the continued serious problems with confusing and misleading billing.<sup>4</sup>

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<sup>1</sup> *Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking*, CC Docket No. 98-170, FCC 05-55, 2005 WL 645905 (rel. March 18, 2005).

<sup>2</sup> Verizon Wireless (Comments 34-36); U.S. Cellular (Comments at 7-8); MCI (Comments at 4); Sprint (Comments at 16); Verizon (Comments at 6); Qwest (Comments at 2-3).

<sup>3</sup> *First Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 98-170, FCC 99-72, (Rel. May 11, 1999).

<sup>4</sup> See Reply Comments at Section II.

The Consumer Groups, NAAG, NASUCA, NARUC and others have provided detailed analyses demonstrating that Congress did not intend to preempt the states, and that states have the authority to regulate in the area of billing practices. The industries' arguments in favor of preemption are flawed, unpersuasive, and contradict the intention of Congress. The Consumer Groups join with NAAG, NASUCA and NARUC in supporting rules that provide strong consumer protections with regards to telecommunications carriers' billing practices.

## **II. THE RECORD IS REPLETE WITH EVIDENCE OF CONFUSING AND MISLEADING BILLING PRACTICES MERITING THE IMPOSITION OF ADDITIONAL BILLING RULES**

Several industry comments suggest that there is an "exaggerated concern" and not enough evidence of the need for additional billing rules.<sup>5</sup> Some commenters further indicate that consumers are generally satisfied with their services and don't require the protections provided by additional rules for billing practices. One carrier alluded to a 2004 FCC complaints report which indicates a significant decrease in the number of complaints over the last quarter of 2004.<sup>6</sup> In fact, consumer complaints about their wireless service *actually increased* 38% from 2003 to 2004.<sup>7</sup> Moreover, in the first quarter of 2005, consumer complaints, most of which pertain to billing and early

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<sup>5</sup> Verizon Wireless (Comments 34-36); U.S. Cellular (Comments at 7-8); MCI (Comments at 4); Sprint (Comments at 16); Verizon (Comments at 6); Qwest (Comments at 2-3).

<sup>6</sup> Verizon Wireless (Comments 34-35).

<sup>7</sup> See, Federal Communications Commission, *Quarterly Reports on Informal Consumer Inquiries and Complaints*, (1st, 2nd, 3rd, and 4th Quarters 2002, 2003 and 2004) ("*FCC Complaint Reports*"), available at <http://www.fcc.gov/cgb/quarter/>.

termination fees, rose to over 7,000.<sup>8</sup> While there is variability in the number of complaints from quarter to quarter, overall, consumer dissatisfaction with wireless services *is on the rise*.<sup>9</sup> Consumer Groups also remind the Commission that the level of complaints received at the FCC does not necessarily represent the level of dissatisfaction consumers are experiencing with their service providers. According to a representative nationwide survey conducted by AARP, nearly half of all cell phone users (46%) reported not knowing whom to contact in case their cell phone provider could not resolve a billing or service problem to their satisfaction. *Only four percent* of the consumers surveyed cited the FCC as a potential point of contact to resolve an unresolved billing or service problem.<sup>10</sup>

There is ample evidence of consumer dissatisfaction and complaints. States have also reported a large volume of complaints about wireless billing practices and inadequate disclosures.<sup>11</sup> This level of consumer dissatisfaction is also reflected in national surveys. According to the Better Business Bureau, wireless services now top the list as the number one complained about industry by consumers.<sup>12</sup> The prominent,

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<sup>8</sup> Source: Remarks of Monica Desai, Chief, Consumer and Governmental Affairs Bureau at the National Association of Regulatory Utility Commissioners 2005 Summer Meeting, Committee on Consumer Affairs, Austin, Texas, July 24, 2005.

<sup>9</sup> The number of cell phone complaints was at a 3 year high in the 3rd Quarter of 2004 (with complaint about billing and rates comprising 54% of those 3rd quarter complaints). See, Federal Communications Commission, *Quarterly Reports on Informal Consumer Inquiries and Complaints*, (1st, 2nd, 3rd, and 4th Quarters 2002, 2003 and 2003) ("FCC Complaint Reports"), available at <http://www.fcc.gov/cgb/quarter/>.

<sup>10</sup> See Christopher A. Baker and Kellie K. Kim-Sung, *Understanding Consumer Concerns About the Quality of Wireless Telephone Service*, AARP Public Policy Institute Data Digest No. 89, p.4 (July 2003).

<sup>11</sup> National Association of Attorneys General (Comments at 3); *2nd Report and Order, Declaratory Ruling, and 2nd FNPR*, CC Docket No. 98-170, FCC 05-55, ¶24 and n.65-66 (rel. Mar. 18, 2005); see also Ben Jones, "Bills Spark Most Cell Complaints," Wisc. Post-Crescent (Mar. 23, 2005)(bill-related problems were most often cited among cell phone complaints filed with the state); "Attorney General Cox Announces 2004 Top 10 Consumer Protection Issues" US State News (Feb. 3, 2005)(telecommunications category which includes cell phones was 2nd from the top)

<sup>12</sup> See Consumer Groups (Initial Comments at 2-3); see also Tony Gnoffo, "Satellite, cable, cell providers rate poorly CONSUMERS RANK SERVICE INDUSTRIES" San Jose Mercury News (May 17, 2005)(Univ. MI annual survey on consumer satisfaction); Rick Barrett, "Cell phones ring up more complaints: Airlines, hospitals also at bottom of survey" Milwaukee Journal Sentinel (June 13, 2005)(Am.

independent American Consumer Satisfaction Index found a “big drop” in consumer satisfaction with wireless service in their last quarterly report.<sup>13</sup> Telecommunications service, including wireless, ranked among the top ten consumer complaints in the nation according to a report compiled by administrators of consumer agencies.<sup>14</sup> Consumers Union’s annual survey of subscribers to ConsumerReports.org found 55 percent of respondents said they were less than completely satisfied with their cell phone service.<sup>15</sup>

More than 35,000 individual consumers have also submitted comments in this docket in support of the original NASUCA petition and in opposition to preemption of state consumer protection laws – a testament to the underlying consumer frustration with current billing practices.

### **III. THE COMMISSION HAS THE AUTHORITY TO, AND SHOULD, ADOPT POINT OF SALES RULES**

Verizon Wireless argues that the Commission should only impose new rules if there is a “clear cut need”.<sup>16</sup> However, the Commission decision cited to support that argument, the Hawaii Petition<sup>17</sup>, does not limit the Commission’s authority to adopt the “Truth-in-Billing” rules proposed in the 2nd FNPRM. The proceeding cited was

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Soc. For Quality in Milwaukee survey); Kimberly Morrison, “Group lists top 10 consumer grips” Det. Free Press (Feb. 12, 2005)(National Assoc. of Consumer Agency Administrators survey found complaints about cell phone contracts and solicitations are rising quickly).

<sup>13</sup> American Consumer Satisfaction Index, Q1 2005: Transportation; Information; Utilities; Health Care and Accommodation and Food Service, Commentary by Professor Claes Fornell, “Plunge in Customer Satisfaction Continues: Big Drops for Hospitals and Wireless Service,” May 17, 2005, accessed July 21, 2005 at [http://www.theacsi.org/scores\\_commentaries/commentaries/Q1\\_05\\_comm.htm](http://www.theacsi.org/scores_commentaries/commentaries/Q1_05_comm.htm)

<sup>14</sup> Thirteenth Annual NACAA/CFA Consumer Complaint Survey Report, conducted by the National Association of Consumer Agency Administrators (NACAA) and the Consumer Federation of America (CFA), released February 10, 2005.

<sup>15</sup> Consumers Union, *Consumer Reports*, February 2005, p. 18.

<sup>16</sup> Verizon Wireless (Comments at 7-8,34-36). *See also* Qwest (Comments at 15).

<sup>17</sup> Petition on Behalf of the State of Hawaii, Public Utility Commission, for Authority to Extend Its Rate Regulation of Commercial Mobile Radio Services in the State of Hawaii, *Report and Order*, 10 FCC RCD 7872,7872, ¶10 (1995).

restricted to the question of state authority to regulate the *rates* of CMRS providers.<sup>18</sup>

There is ample evidence in the record of this proceeding demonstrating the need for Point of Sale disclosure rules.<sup>19</sup>

Several carriers argue that point of sale disclosures are “useless” to consumers and/or “burdensome” for carriers.<sup>20</sup> Yet, the provision is endorsed in comments filed by groups representing the smallest telecommunications carriers, those who one would expect to be most concerned about additional costs of compliance:

The Commission’s proposal to obligate carriers to disclose material rates and terms of service at the point of sale or during a telephone conversation between the carrier and a consumer before the customer signs any contract is one that the Associations support. This proposal will impose minimal costs on the industry, but the consumer benefit is great. The customer should be fully informed about the full rate he or she will pay, including any “non-mandated” line items and a reasonable estimate of government mandated surcharges. The consumer benefit of this requirement outweighs the minimal cost to the carriers.<sup>21</sup>

Consumer Groups agree that the benefits far outweigh any minimal additional costs. Shopping for cell phone service is a daunting process. In a Consumers Union survey, 43 percent of respondents found it difficult to determine the actual total cost of the service when they were shopping for a wireless carrier. In adopting the original Truth-in-Billing guidelines in 1999, the Commission noted that consumers should be

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<sup>18</sup> Petition on Behalf of the State of Hawaii, Public Utility Commission, for Authority to Extend Its Rate Regulation of Commercial Mobile Radio Services in the State of Hawaii, *Report and Order*, 10 FCC RCD 7872,7874-5 (1995); *see also First Memorandum and Opinion and Order on Reconsideration In the Matter of Telephone Number Portability*, CC Docket No. 95-116, RM-8535, FCC 97-74 at ¶140 (Rel. Mar.11, 1997); In the Matter of Petition of the Connecticut Department Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut, *Report and Order*, 10 FCC RCD 7025, 7032-33(1995).

<sup>19</sup> *See*, NAAG Comments generally; NASUCA (Comments at 52); NTCA (Comments at 4); Consumer Group (Comments at 25) (Consumers Union survey finding 43 percent of respondents found it difficult to determine the actual total cost of the service when they were shopping for a wireless carrier).

<sup>20</sup> Verizon Wireless (Comments at p.47), U.S.Cellular (Comment at p. 8), MCI (Comment at p. 11), Bell South (Comments at p. 5), SBC (Comment at p 10).

<sup>21</sup> Comments of the National Telecommunications Cooperative Association, The Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance, p. 4.

“provided with basic information they need to make informed choices in a competitive telecommunications marketplace, while at the same time protecting themselves from unscrupulous competitors.”<sup>22</sup> The competitive market is not served by consumers waiting until after they receive their first bill to discover the true cost of services. This is particularly true for customers of wireless phone service, who will almost certainly receive their first bill after the 14 day trial period, after which they are locked into one or two year contracts with high cancellation penalties.

Cingular, Sprint and Verizon support the Commission limiting any point of sale disclosures to those that are part of the Assurance of Voluntary Compliance (“AVC”) entered into by those carriers and the Attorneys General of 32 states.<sup>23</sup> As Consumer Groups stated in our initial comments, the AVC is a starting point, but must be amended to provide meaningful disclosures to consumers.<sup>24</sup>

#### **IV. THE CARRIERS PROPOSE AN INADEQUATE AND UNTENABLE ENFORCEMENT SCHEME THAT WILL ELIMINATE A VITAL DETERRENT FOR CONFUSING AND DECEPTIVE BILLING**

Many carriers suggest that the proper role of the states is to monitor the compliance of the “Truth-in-Billing” rules and, when warranted, use § 208 to file complaints with the Commission, or ask the Commission to conduct an investigation.<sup>25</sup> In the area of confusing and misleading billing, §§ 207<sup>26</sup> and 208 are ineffective enforcement tools for consumers. Section 208 would lead consumers to unreasonable

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<sup>22</sup> *First Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 98-170, (rel. May 11, 1999), at ¶ 1.

<sup>23</sup> Cingular (Comments at p. 55), Sprint (Comment at p. 22), Verizon (Comment at p. 45)

<sup>24</sup> Consumer Groups (Comments at pp. 26-29).

<sup>25</sup> Cingular (Comments at 18); Nextel (Comments at 31); CTIA (Comments at 32-33); Sprint (Comments at 17); Verizon Wireless (Comments at 31-32); Verizon (Comments at 21).

expectations that the FCC will help resolve their billing problems with their carriers. The FCC Consumer Facts, “*GOT A GRIPE? FILING A COMPLAINT WITH THE FCC IS EASY*” handout states, under the header “What Good Will It Do?”:

Filing an informal complaint with the FCC may help resolve disputes consumers have with companies regulated by the FCC. It will not necessarily result in a fine or enforcement action against the company, but is a way for you, the consumer, to obtain a specific response from the company *and, in most cases, a satisfactory resolution to your complaint.* After receiving your complaint, FCC staff generally will forward it to the service provider and direct the company to respond to the FCC within 30 days. The FCC also directs the company to send a copy of its response to you (the complainant). If your complaint involves an interstate telephone matter and you do not like the company’s response to your complaint, the FCC’s rules give you the right to file a “formal” complaint. *Consumers who wish to file formal complaints pay a \$165.00 filing fee per complaint and must satisfy very specific procedural and evidentiary requirements. For these reasons formal complaints are usually filed by lawyers.* For complete information on how to file formal complaints, see 47 CFR Section 1.720 through 1.735. Instructions are also available online at: [wireless.fcc.gov/rules.html](http://wireless.fcc.gov/rules.html). (*emphasis added*)

While § 207 allows consumers to sue in district court, it is highly unlikely that a consumer will have the resources to bring suit against a carrier regarding a nominal line-item charge.

As noted by some Commissioners, in the six years since the adoption of the truth-in-billing requirements, the FCC has not issued a single Notice of Apparent Liability regarding the type of misleading billing practices at issue in this 2nd FNPRM.<sup>27</sup> In fact, several carriers argue that this very absence of enforcement has led to this 2nd FNPRM for additional billing rules.<sup>28</sup>

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<sup>26</sup> Cingular (Comments at 18); CTIA (Comments at 37, fn 88).

<sup>27</sup> Separate Statement of Commissioner Michael J. Copps Approving in Part, Dissenting in Part; Statement of Commissioner Jonathan S. Adelstein Approving in Part, Dissenting in Part.

<sup>28</sup> USTA (Comments at 2); NCTA (Comments at 3-4); SBC (Comments at 4); Qwest (Comments at 3)



The Consumer Groups agree with NAAG that “States must have authority . . . to adopt their own penalty provisions, which are necessary to provide meaningful consequences for violators and to encourage compliance with adopted standards.”<sup>29</sup> The means to clearer, non-misleading bills is to continue to enhance the state-federal relationship by adopting stronger, rather than fewer enforcement tools. Eliminating regulatory and enforcement authority from the states, and relying instead on the marketplace, would harm consumers. State enforcement of state-imposed penalties is crucial to help promote clearer, non-misleading bills, particularly since the Commission has yet to issue a single Notice of Apparent Liability.

Some carriers have cited the Order in the Connecticut Petition<sup>30</sup> to support their argument for a national preemptive regulatory policy for CMRS billing practices.<sup>31</sup> Yet in that order, and a similar order in the Hawaii Petition<sup>32</sup>, the Commission acknowledges the legislative history expressly reserving to the states the ability to regulate “other terms and conditions.” The Commission, under the header “VI. Regulation of Other Terms and Conditions,” states:

78. Prior to OBRA, Section 332 prohibited the states from imposing “rate . . . regulation” upon certain wireless telecommunications carriers. [] This prohibition was construed broadly to preclude almost all state regulatory activity.[] As revised by OBRA, Section 332(c)(3) now prohibits state from regulating “the rates charged” for CMRS, but it expressly reserves to them the authority to regulate the “other terms and conditions of commercial mobile services.” Although there is no definition of the term “the rates charged” in the statute or its legislative history, there is legislative history regarding the “other terms and conditions” language. . .

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<sup>29</sup> NAAG (Comments at 13).

<sup>30</sup> In the Matter of Petition of the Connecticut Department Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut, *Report and Order*, 10 FCC RCD 7025 (1995)(“Connecticut Petition).

<sup>31</sup> See Verizon Wireless (comments at 7-8); Sprint (Comments at 4).

<sup>32</sup> Petition on Behalf of the State of Hawaii, Public Utility Commission, for Authority to Extend Its Rate Regulation of Commercial Mobile Radio Services in the State of Hawaii, *Report and Order*, 10 FCC RCD 7872,7874-5 (1995)(“Hawaii Petition”).

79. The House of Representatives Committee on Energy and Commerce, reporting on the House bill that was incorporated into the amended Section 332, noted that even where state rate regulation is preempted, states nonetheless may regulate other terms and conditions of commercial mobile radio services. The Committee stated: []

By “terms and conditions,” the Committee intends to include such matters as customer billing information and practices and billing disputes and other consumer protection matters . . . This list intended to be illustrative only and not meant to preclude other matters generally understood to fall under “terms and conditions.”

80. Establishing with particularity a demarcation between preempted rate regulation and retained state authority over terms and conditions requires a more fully developed record than is presented by the DPUC Petition and related comments. Thus, we will not expound at length on this matter. The legislative history largely speaks for itself. . . .<sup>33</sup>

The Commission should be consistent and once again recognize the legislative history regarding the states’ authority to regulate billing matters and reject attempts to wrest the traditional regulatory and enforcement authority from the states.

## **V. CONCLUSION**

The Consumer Groups remain concerned about the harm to consumers from misleading billing practices and the increase in billing disputes. The industry-proposed solutions to address consumer problems with billing practices are untenable and unworkable. Without a federal-state partnership to implement and enforce strong Truth-in Billing rules, consumers will have little to ensure their telephone bills are clear and non-misleading.

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<sup>33</sup> Connecticut Petition at ¶¶ 78-80 (footnotes omitted). See also Hawaii Petition at ¶¶ 53-55.

Respectfully Submitted,

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